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RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL CHARLES RAUFMAN and CARMIE S. MALONEY

Appeal No. 2008-1321
Application 10/664,373
Technology Center 3700

Oral Hearing Held: November 6, 2008

Before TONI R. SCHEINER, ERIC GRIMES and FRANCISCO C. PRATS,
Administrative Patent Judges.

ON BEHALF OF THE APPELLANTS:

CHARLES MATSON, ESQUIRE
The Procter & Gamble Company
Sycamore Building
Fourth Floor
299 East Sixth Street
Cincinnati, Ohio 45202

The above-entitled matter came on for hearing on Thursday,
November 6, 2008, commencing at 9:37 a.m., at the offices of the U.S.
Patent and Trademark, 600 Dulany Street, Alexandria, Virginia, before
Mario A. Rodriguez, CMRS, CCR No. 0315162, Notary Public.

P R O C E E D I N G S

JUDGE SCHEINER: You can sit up at the table so we can see you.

MR. MATSON: Can I start?

JUDGE SCHEINER: Would you like to introduce your colleague for the record?

MR. MATSON: Sure. This is Andy Faust with Procter & Gamble Company.

JUDGE SCHEINER: Yes, whenever you're ready. You have 20 minutes.

MR. MATSON: Thank you for your time this morning.

This case is related to disposable absorbent articles, and more particularly to absorbent articles with side panels having images disposed thereon.

The claims -- independent claim of the pending application recites in particular a disposable absorbent article having first and second waist regions comprising among other elements wherein the side panels -- a pair of side panels extend outwardly from the second waist region. And they have securement elements on them that allow them to engage the first waist region.

The claims also recite a predetermined ornamental visual image consisting of a first image element joined to one of the side panels and a second image element joined to the other side panel.

JUDGE SCHEINER: So the claim overall is comprising, but that the image consists of the two --

1 MR. MATSON: That's right. The ornamental visual image consists
2 of a first element and a second image element.

3 It also says that when the side panels are secured to the first waist
4 region, the first and second elements complete the predetermined ornamental
5 visual image.

6 JUDGE SCHEINER: May I interrupt?

7 MR. MATSON: Yup.

8 JUDGE SCHEINER: Is that image purely ornamental or does it have
9 a function, and is that discussed in the specification?

10 MR. MATSON: Yes, it's for alignment purposes so you know you
11 put the thing on correctly.

12 JUDGE SCHEINER: Okay.

13 MR. MATSON: The examiner has rejected the claims under 102 over
14 patent number 6,045,543 which I'll refer to as Pozniak.

15 Now, Pozniak discloses an absorbent article with fastener tabs, and it
16 has indicia on the fastener tabs and also has indicia on the waist region.
17 Okay?

18 And the purpose of the indicia are to allow a user to align properly,
19 laterally or inwardly, the placement of the fastener tabs on the waist region.

20 As such, Pozniak discloses three areas of the article that would
21 comprise or that comprise indicia, and that's in contrast of what the claim is
22 which, again, we have this visual image that consists of a first image element
23 and a second image element.

24 "Consisting of," as you know, is a closed transitional term and it
25 excludes unrecited additional components.

1 JUDGE SCHEINER: What if you were to bring the tabs on the
2 Pozniak together, wouldn't you still have a continuous image if they were to
3 meet in the middle?

4 MR. MATSON: What would be the image?

5 JUDGE SCHEINER: The parallel lines.

6 MR. MATSON: If they were to meet in the middle?

7 JUDGE SCHEINER: If the two tabs were to overlap.

8 MR. MATSON: That would not -- I would argue that that is not a
9 predetermined visual image that consists of a first image element and a
10 second image element.

11 JUDGE SCHEINER: Why wouldn't it be a visual image?

12 MR. MATSON: Because it's predetermined. Connotes an image
13 that is decided beforehand. There is, for instance, a basketball or a ball that
14 you're going to put together. Putting the tabs together on Pozniak, I would
15 argue, doesn't provide you with a predetermined visual image as is in the
16 claim.

17 JUDGE SCHEINER: Does your specification define predetermined
18 visual image?

19 MR. MATSON: No, it doesn't define predetermined visual image.

20 JUDGE SCHEINER: I think Pozniak says somewhere that the lines
21 can be different colors and they are used for alignment purposes, so I'm
22 trying to understand why that wouldn't -- putting those two tabs together
23 wouldn't produce a complete image.

24 MR. MATSON: I guess I would fall back to the claim recites a
25 predetermined visual image. Predetermined is decided beforehand.

1 Pozniak recites or discloses the ability to put fastener tabs down on
2 your waist region in various arrangements.

3 One of the arrangements, I suppose, is perhaps you could push the
4 things together. Is that really a predetermined visual element? I don't think
5 it is. I mean, the visual element is --

6 JUDGE SCHEINER: The lines would match up though, correct?

7 MR. MATSON: They could.

8 JUDGE SCHEINER: When it's aligned correctly?

9 MR. MATSON: Yeah.

10 JUDGE SCHEINER: Okay. I understand the point you're making.

11 MR. MATSON: Okay.

12 With regard to what the examiner's -- or at least the error that we
13 believe the examiner is making is her reliance on Pozniak to say that she
14 says that the middle is relied to show the completion of the predetermined
15 ornamental visual image.

16 JUDGE SCHEINER: Right, and your position would be that the --

17 MR. MATSON: You're using three areas.

18 JUDGE SCHEINER: To complete -- the tabs themselves have to
19 complete the image.

20 MR. MATSON: Right. That's all I have.

21 JUDGE SCHEINER: I think we understand that clarification.

22 MR. MATSON: It's not terribly complex.

23 JUDGE SCHEINER: No, it's not.

24 Did you have anything further?

25 JUDGE PRATS: No.

1 JUDGE GRIMES: No.

2 JUDGE SCHEINER: Thank you for coming in.

3 MR. MATSON: I'll be back, I guess, next month.

4 JUDGE SCHEINER: Would you like to just stay? You're arguing
5 the next case as well.

6 MR. MATSON: Maybe we should double-check with the clerk, but
7 I'm pretty sure I'm next.

8 JUDGE SCHEINER: Well, yes.

9 MR. MATSON: For Procter & Gamble.

10 JUDGE SCHEINER: Yes, we have you -- I understand that there was
11 another case that you didn't receive.

12 MR. MATSON: Yeah. I don't know -- it was my case too. I
13 thought --

14 JUDGE SCHEINER: We don't expect you to be ready to argue it.

15 MR. MATSON: Good. Because I looked at it and I didn't recognize
16 it at the time.

17 JUDGE SCHEINER: We don't expect you to argue that. We'll
18 reschedule with you on that.

19 MR. MATSON: That will be great.

20 JUDGE SCHEINER: So someone will contact you to reschedule. I'm
21 sorry you have to come back again.

22 MR. MATSON: That's okay.

23 (Whereupon, the proceedings at 9:48 a.m. were concluded.)
24
25